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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,036	05/04/2007	Anders Umegard	800738-0009	6187
27910 7590 09/09/2010 STINSON MORRISON HECKER LLP ATTN: PATENT GROUP 1201 WALNUT STREET, SUITE 2800 KANSAS CITY, MO 64106-2150				
EXAMINER				
CLERKLEY, DANIELLE A				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/585,036

Applicant(s)

UMEGARD ET AL.

Examiner

DANIELLE CLERKLEY

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3, 4, 6-9, 12, 13, 15-20 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) 12, 13, 15-19, 24 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 4, 6-9, 20, 23 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of group I, milking method, in the reply filed on 7/12/2010 is acknowledged. Claims 12-13, 15-19, 24 and 26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.
2. The Applicant argues "it is clear that inventions of claims 23 and 24, the only remaining independent claims, are not independent and distinct, one from the other...In this regard, the method of claim 23 may be conducted only by using the apparatus of claim 24 and the apparatus of claim 24 is useful solely for the purpose of performing the method of claim 23."
3. This argument is not found persuasive because the invention of claim 23 specifically recites the step of "measuring the total milk flow using a milk meter", whereas claim 24 merely recites "a milk meter adapted for measuring...and generating". It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. Thus, the apparatus of claim 24 can be used in a materially different method of using that apparatus, such that the milk meter can be used to measure the weight of the milk collected. In conclusion, the requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 23, 25, 3, 4, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loosveld (EP 0657098 A1) in view of Sjölund et al. (U.S. Patent No. 6,830,008).

6. In re claim 23, Loosveld discloses a method of milking animals comprising measuring the total milk flow from all the teats of the udder of an animal being milked using a milk meter device (Col. 4, lines 17-23: sensor 27) adapted for generating data representative of the measured total milk flow rate (Col. 4, lines 23-29), and analyzing said data using an analyzer (processing device 23) to detect an abnormal milk flow from one teat indicated by a predetermined departure from a predicted relationship between the milk flow rate and the time from commencement of milking (Col. 5, lines 2-36), and generate an output in response to said departure signaling that medical inspection of the animal is advisable (Col. 3, lines 20-25 and Col. 5, lines 33-39); In re claim 3, Loosveld discloses the analysis comprises calculations (Col. 5, lines 23-27: processing unit 23 uses statistical techniques to determine deviations) of the rate of change in the reducing milk flow rate (Col. 5, lines 33-36); In re claim 8, Loosveld discloses the milk flows from the respective teats are brought together (Col. 4, lines 21-23: milk cluster 26) and the total milk flow is measured in a single milk meter (sensor 27 of cluster 26); In re

claim 9, Loosveld discloses the predicted relationship between the milk flow rate (Col. 5, lines 11-13) and the time from commencement of milking (Col. 5, lines 8-10: milk flow period, beginning of milk flow) for an animal is derived from data collected during one or more previous milkings of the same animal (Col. 1, line 8 and lines 52-56: data is measured and stored, thus enabling the user to refer to historical data for convenient use); and in re claim 25, Loosveld discloses wherein the analysis includes determining a peak flow rate at which the flow rate remains substantially level for a major part of the animal milking procedure, and determining the duration of the milk flow at the peak flow rate and the duration of the flow rate at the peak flow rate (Col. 5, lines 14-18).

7. Loosveld discloses the invention as discussed above, but fails to disclose the detected departure is a departure from a predicted stepped reduction in the milk flow rate towards the end of the milking procedure for the animal. However, Sjölund et al. teaches a method of milking animals comprising analyzing data to detect abnormal milk flow from one teat (Col. 5, lines 23-27); wherein the data is analyzed to detect a departure from a predicted stepped reduction in the milk flow rate towards the end of the milking procedure for the animal (abstract and as shown in Figs. 1a, 1b); and wherein the predicted stepped reduction in the milk flow rate includes four step reduction changes corresponding to the milk flow from the respective teats falling at the end of milking (as shown in Figs. 1a-1d). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the milking method of Loosveld to include analysis of each udder quarter as taught by Sjölund et al. to

selectively monitor the milk flow, in particular, the health of each individual udder quarter for efficient identification of an unhealthy milking animal.

8. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loosveld (EP 0657098 A1) in view of Sjölund et al. (U.S. Patent No. 6,830,008), as applied to claims 23, 25, 3, 4, 8 and 9 above, and further in view of Wakui et al. (U.S. Patent No. 5,152,246).

9. In re claim 6, Loosveld as modified by Sjölund et al. discloses the invention as discussed above, but fails to specifically disclose a ratio of the peak flow duration to the peak flow rate is calculated. However, Wakui et al. teaches a method of milking animals includes a ratio of the peak flow duration to the peak flow rate is calculated (as shown in graph of Fig. 2b and discussion Col. 4, line 62 through Col. 5, lines 1-15). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the milking method of Loosveld as modified by Sjölund et al. to include data analysis as taught by Wakui et al. to selectively monitoring the milking animal, and possibly discontinue milking procedures, when the calculated ratio value departs from a predicted value.

10. In re claim 7, Loosveld as modified by Sjölund et al. discloses the invention as discussed above, including comparing predetermined milk flow characteristic values with deviations in the measured data and further signaling the milking animal when the deviations exceed the predetermined values (Loosveld abstract) but fails to specifically disclose comparing the peak flow rate and the duration of the peak flow rate. However, Wakui et al. teaches, in Fig. 8, comparing the peak flow rate (flow rate) and the duration

of the peak flow rate (time) with predicted values (dashed line indicating the predicted flow rate), wherein the peak flow rate departs significantly from the predicted peak flow rate but the peak flow duration remains within acceptable limits of the peak flow rate duration (as discussed in Col. 1, lines 54-68). It would have been obvious to one having ordinary skill in the art to have modified the milking method of Loosveld as modified by Sjölund et al. to include data analysis as taught by Wakui et al. to selectively monitoring the milking animal, and possibly discontinue milking procedures when the peak flow rate departs from the predicted peak flow rate.

11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Loosveld (EP 0657098 A1) in view of Sjölund et al. (U.S. Patent No. 6,830,008), as applied to claims 23, 25, 3, 4, 8 and 9 above, and further in view of Mein (U.S. Patent No. 5,178,095).

12. In re claim 20, Loosveld as modified by Sjölund et al. discloses the invention as discussed above, including using an analyzer (processing device 23) for measuring and storing statistical data of milking conditions, but fails to specifically disclose data such as milking vacuum levels, hormone stimulation, and/or time of teat cup detachment. However, Mein teaches it is old and notoriously well-known to analyze milking conditions (as shown in Fig. 4), namely the milking vacuum level data for a subsequent milking of the animal, generated with the milk flow rate data during the milking of the same animal (Col. 5, lines 36-43). It would have been obvious to one having ordinary skill in the art at the time of the invention to have determined several milking conditions as taught by Mein based on the data generated by the method of Loosveld as modified

by Sjölund et al. for the advantage of monitoring conditions on an animal-by-animal basis, by comparing data previously recorded.

Response to Arguments

13. Applicant's arguments with respect to claims 1, 3, 8, 9 and 21 have been considered but are moot in view of the new ground(s) of rejection.

14. The Applicant argues that Loosveld fails to analyze the data, specifically from one teat of the animal. However, Loosveld clearly discloses connecting the milk cluster to the udders of the animal (Col. 4, lines 17-21), thus the analysis is conducted to detect an abnormal milk flow from at least one udder of the animal.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIELLE CLERKLEY whose telephone number is (571) 270-7611. The examiner can normally be reached on M-TH 8:00 AM - 5:00 PM EST, F 8:00 AM - 4:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DANIELLE CLERKLEY/
Examiner, Art Unit 3643

/Kimberly S Smith/
Primary Examiner, Art Unit 3644